No. 87-645

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

F. CLARK HUFFMAN, *et al.*,
Petitioners

v.

WESTERN NUCLEAR, INC. *et al.*,
Respondents

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF ELDORADO NUCLEAR LIMITED, AMOK LTD., SASKATCHEWAN MINING DEVELOPMENT CORPORATION, URANERZ EXPLORATION AND MINING LTD., AND THE GOVERNMENTS OF CANADA, THE PROVINCE OF SASKATCHEWAN, AND THE PROVINCE OF ONTARIO AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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November 18, 1987

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Pursuant to Rule 36 of the Rules of this Court, Eldorado Nuclear Limited, Amok Ltd., Saskatchewan Mining Development Corporation, Uranerz Exploration and Mining Ltd. ("the Canadian producers") and the Governments of Canada, the Province of Saskatchewan and the Province of Ontario [1] respectfully submit this brief as *amici curiae* in support of the Solicitor General's petition for a writ of certiorari to review the

[1] The Canadian producers and the three Governments are referred to collectively as "the Canadian Interests."

judgment of the United States Court of Appeals for the Tenth Circuit, upholding the decision of the District Court for the District of Colorado which enjoined the Secretary of Energy from enriching foreign uranium. Both the petitioners and the respondents have consented to the filing of this brief, and the written consents have been filed with the Clerk of the Court.

INTEREST OF THE AMICI CURIAE

Canada is the western world's largest producer and exporter of uranium. It enjoys a comparative advantage in uranium with production from some of the world's richest uranium deposits at relatively low production costs. The Canadian uranium industry shipped 10,977 metric tons of uranium in 1986, valued at Cdn. $923.8 million dollars. Over one-third of these shipments were exported to the United States in 1986. The Canadian producers appearing as *amici curiae* account for approximately sixty percent of total Canadian production and sixty-eight percent of scheduled deliveries of Canadian uranium to the United States over the period 1987 to 1991. The Canadian uranium industry provides thousands of jobs and is an important component of the Canadian economy. The Provinces of Saskatchewan and Ontario, which have jurisdiction over natural resources, including mineral resources, within their boundaries, obtain substantial revenues from the royalties charged to mining companies for extraction of uranium.

The district court's injunction would erect a significant barrier to the free flow of uranium in the international marketplace and would completely bar the flow of natural, unenriched uranium into the United States. Canada—as the largest foreign supplier of uranium to the United States market—will be particularly affected if the lower court's decision is upheld. The final resolution of the responsibilities and obligations of the Secretary of Energy ("the Secretary") under Section 161(v) of the Atomic Energy Act will therefore have direct repercussions upon the Canadian Interests and upon trade relations generally between the United States and Canada, its largest trading partner.

The Canadian Interests clearly have a substantial stake in the outcome of this litigation. The Government of Canada stated in a Diplomatic Note submitted to the United States Department of State that "Canada will be the foreign supplier most adversely affected by this restriction [imposed by the lower court's decision]," and urged the Government of the United States to appeal the lower court's decision. (Diplomatic Note No. 194, from the Embassy of Canada (July 22, 1987), attached as Appendix A, at 2a ("Diplomatic Note").) The Canadian Interests are in a better position than are the parties to address the significance of the decision below upon the free flow of trade in uranium and upon United States-Canadian trade relations generally.

INTRODUCTION

The Court of Appeals for the Tenth Circuit upheld the district court's decision that Section 161(v) of the Atomic Energy Act of 1954, as amended ("the Atomic Energy Act"), required the Secretary to restrict the enrichment of foreign uranium, regardless of whether such restrictions would help to "assure the maintenance of a viable domestic uranium industry." (42 U.S.C. § 2201(v) (1982).) This interpretation is inconsistent with a decision of this Court in a closely analogous case, it effectively rewrites the statute at issue, and it ignores the specific factual findings of the agency entrusted to administer the statute.

This case, therefore, goes far beyond a simple question of statutory interpretation. The Court of Appeals itself acknowledged that the case "raises important issues, the resolution of which will affect not only the parties involved in this suit but also all utilities that use nuclear power as well as the eventual consumers who purchase power from such utilities." (Petition for a Writ of Certiorari, Appendix at 3a, *Huffman* v. *Western Nuclear, Inc.*, No. 87-645 ("Pet. App.").) In addition, the decision directly affects the free flow of uranium in international trade and the uranium producing industry world-wide, and threatens vital international trade relationships with Canada. The case therefore merits review by this Court.

ARGUMENT

CERTIORARI SHOULD BE GRANTED BECAUSE OF THE IMPORTANCE OF THE INTERESTS AT STAKE AND BECAUSE THE DECISION BELOW REWRITES THE STATUTE IN CONTRAVENTION OF THIS COURT'S PRECEDENT

A. The Relevant Facts

The United States Congress has determined that regulation and supervision of the domestic uranium industry is an important component of the United States nuclear energy system. To this end, Congress directed the Secretary to restrict enrichment of foreign uranium "to the extent necessary to assure the maintenance of a viable domestic uranium industry." (Section 161(v) of the Atomic Energy Act, 42 U.S.C. § 2201(v).) Pursuant to this directive, the Secretary imposed restrictions on the enrichment of foreign uranium in 1967. However, the Secretary began a phase-out of the restrictions in 1977, which was completed in 1984.

The Secretary subsequently made findings, pursuant to Section 170B of the Atomic Energy Act (42 U.S.C. § 2210(b)), that the domestic industry had not been viable in 1984 and 1985. However, he also concluded that the reimposition of restrictions on enrichment of foreign uranium would in no way assist, much less "assure," the viability of the domestic uranium industry. (Uranium Enrichment Services Criteria, 51 Fed. Reg. 27,132, 27,138 (1986) codified at 10 C.F.R. 762 (1987).) The Secretary therefore determined, in full accord with the plain language and the purpose of the statute, that he would not restrict the enrichment of foreign uranium because to do so would be pointless and would not "assure . . . the viability" of the domestic uranium industry. (*Id.*)

B. The Decision Below Will Have A Serious Impact on United States-Canadian Trade Relations

The lower court's decision will have far-reaching negative consequences for United States-Canadian trade relations generally. Neither the District Court nor the Court of Appeals for the

Tenth Circuit considered the broader context in which this case must be viewed.

The lower court's order amounts to nothing less than a unilateral reversal of United States trade policy towards Canada and the erection of a significant non-tariff trade barrier. Such a policy reversal is particularly troubling in light of the Secretary's specific finding that restrictions on enrichment of foreign uranium would not help the domestic industry become viable. (51 Fed. Reg. at 27,138 (1986).)

In addition, the district court's injunction threatens vital international trade relationships. Officials of both the Canadian and United States governments have attested to the grave consequences that the district court's injunction would have on United States-Canadian trade relations. In a Diplomatic Note submitted to the Department of State, the Canadian government stated that the lower court's decision "will severely disrupt Canadian exports of uranium to the United States, will have harmful implications for the international uranium market, and will give rise to major trade irritants between the United States and its current suppliers of uranium." (Diplomatic Note, Appendix A at 1a.) The Government of Canada also informed the Department of State that restrictions on the enrichment of foreign uranium under Section 161(v) would be "clearly inconsistent" with the United States' obligations under the General Agreement on Tariffs and Trade.[2] (*Id.*) In light of these considerations, the Government of Canada "urge[d] the Government of the United States to appeal this Court decision. . . ." (*Id.* at 2a.)

Echoing these concerns, the United States Trade Representative, in a letter to the Secretary of Energy, stated that restrictions on foreign uranium would have "an adverse impact

[2] Article III of the General Agreement on Tariffs and Trade prohibits member nations from regulating the internal sale or use of goods in a manner which "afford[s] protection to domestic production." General Agreement on Tariffs and Trade, Oct. 30, 1947, Art. III, 61 Stat. (5), (6), T.I.A.S. No. 1700, 55 U.N.T.S. 194, as amended. The lower court's injunction—by prohibiting the Secretary from enriching foreign uranium while permitting him to continue enriching domestically-produced uranium—would contravene this basic "national treatment" obligation.

on our trade and other relations with important trading partners without solving the long term problems of the industry." (51 Fed. Reg. at 27,137 n.17 (quoting letter).) And the Office of the United States Trade Representative submitted a declaration to the District Court stating that entry of the injunction "will have major adverse effects on the trade policy of the United States," and that the injunction "would be particularly damaging to trade relations with Canada." (Declaration of Robert A. Reinstein, Director of Energy Trade Policy, Office of the United States Trade Representative (June 13, 1986), attached as Appendix B at 2b.)

Finally, the lower court's decision not only greatly restricts United States-Canadian trade in uranium, but as the Government of Canada has stated, the imposition of new restrictions on the enrichment of Canadian uranium "would be completely at odds with current efforts to negotiate a free-trade agreement between our two countries." (Diplomatic Note, Appendix A at 1a.)[3]

[3] On October 4, 1987, after the Government of Canada's Diplomatic Note was submitted, the United States and Canada reached an agreement in principle on the Elements of a Canada-United States Free Trade Agreement. The agreement provides, *inter alia*, that both countries agree to "assure the freest possible bilateral trade in energy. . . ." (Elements of Canada-United States Free Trade Agreement, October 4, 1987, excerpts attached as Appendix C at 2c.) Specifically, the Agreement states that, "The United States has agreed to: (1) eliminate the legislative restriction [42 U.S.C. § 2201(v)] on enrichment of Canadian uranium . . . ." (*Id.* at 3c.)

The fact that the "essential elements" of a Free Trade Agreement have been agreed to should not, however, deter this Court from granting certiorari in this case. The Agreement is still preliminary; the language of the final agreement must still be drafted. It must then be presented to and approved by both the Canadian Parliament and by the United States Congress. The Court should not speculate on whether or not the Free Trade Agreement will become law and what the final terms of that Agreement might be. For example, effectiveness of the provision with respect to uranium enrichment might be delayed beyond the effective date of the Agreement itself, as will be other provisions in the Agreement. Moreover, even if both countries adopt the Free Trade Agreement, the lower court's decision would still restrict the enrichment of foreign uranium imported from other important allies and trading partners, most notably Australia. Finally, the Agreement will not take effect until January 1, 1989, so that refusal to grant *certiorari* would result in a restriction on the enrichment of Canadian uranium at least until that date.

C. The Decision of the Court of Appeals Is In Direct Conflict With A Decision of This Court

The lower court's decision directly conflicts with this Court's precedent in *Young* v. *Community Nutrition Institute*, No. 85-664, slip op. (U.S. June 17, 1986). Federal agencies, such as the Department of Energy, depend upon consistent judicial decisions to assist them in interpreting the complex statutes which many agencies must administer. Contradictory judicial interpretations of closely analogous statutes can hinder effective and consistent agency action. The need for this Court to reconcile such inconsistencies is particularly compelling in this case, in which such vital and far-reaching interests are at stake.

In *Young*, the relevant statute stated that the Food and Drug Administration ("FDA") "shall promulgate regulations limiting the quantity of [carcinogens] to such extent as [it] finds necessary for the protection of public health." (21 U.S.C. § 346 (1986).) The Court agreed with the FDA's interpretation that, "the phrase 'to such extent as [it] finds necessary for the protection of public health . . . modifies the word "shall." '" (Slip op. at 5-7.) This Court therefore deferred to the FDA's interpretation that it was not necessary to promulgate regulations that were not required to protect the public health. (*Id.* at 7.)

The lower court's decision simply cannot be reconciled with *Young*. The lower court reasoned that the modifying phrase in Section 161(v), "to the extent necessary to assure the maintenance of a viable domestic uranium industry," only informs the Secretary of the "*amount* of restriction required," and that it does not modify the phrase "shall." (Pet. App. at 17a (emphasis in original).) The lower court's reasoning, however, ignores the fact that the modifying phrase, "to the extent necessary . . .," immediately precedes the word "shall," whereas in *Young* the two phrases were "free-floating" and not connected. (Slip op. at 6.) If anything, the Secretary's interpretation of Section 161(v) therefore is even more rational and convincing than was the FDA's interpretation of the statute at issue in *Young*.[4]

[4] Of course, the Secretary's interpretation of Section 161(v) is entitled to deference as long as it is rational. (*Young*, slip op. at 7.) The Secretary's

(footnote continues)

D. The Decision of the Court of Appeals Contravenes the Plain Language of the Statute

The Secretary's interpretation of Section 161(v) satisfies his obligation under the plain language of the statute to restrict enrichment only if to do so would assist the domestic industry. The Secretary is neither required, nor indeed permitted by the statute, to impose unwarranted or futile restrictions that would not help to assure the viability of the domestic industry.

It is axiomatic that a statute must first be interpreted by analyzing the plain language of the statute itself. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 197 (1976). That rule applies directly to this case. On its face, Section 161(v) directs the Secretary to withhold enrichment of foreign uranium for use in the United States only "*to the extent necessary* to assure the maintenance of a viable domestic uranium industry." (42 U.S.C. § 2201(v) (emphasis supplied).) The lower court, however, concluded that the statute "instructs that when domestic nonviability is determined, restrictions on enrichment of foreign-source uranium must be imposed . . . ." (Pet. App. at 17a.) The lower court reasoned that such restrictions must be imposed regardless of whether or not they would assure the viability of the domestic industry. (*Id.* at 18a.)

The lower court's interpretation rewrites the plain language of the statute. Congress could have written the statute to require the Secretary to restrict enrichment of foreign uranium whenever the industry was not viable. For example, Congress could have directed that "the Secretary shall not offer enrichment services for source or special nuclear materials of foreign origin whenever he determines that the domestic industry is nonviable." Congress did not do so. Rather than imposing an automatic, mandatory requirement that the Secretary impose restrictions whenever the industry is nonviable, Congress granted the Secretary the authority to impose restrictions only

(footnote continued)

interpretation, based on his considerable experience with the statute, and on the plain language of the statute itself, clearly is entitled to great deference in these circumstances.

"to the extent necessary to assure" the viability of the domestic industry.[5] In other words, Congress did not substitute its judgment for the Secretary's by imposing a mandatory trigger, but instead left it to the Secretary to determine whether restrictions would assure the viability of the domestic industry. The lower court's reading disregards this critical distinction.[6]

E. The Decision of the Court of Appeals Would Lead to Absurd Results

As the Solicitor General notes, the lower court's reading would require the Secretary to restrict enrichment of foreign uranium even if the domestic industry ceased to exist. (Petition for a Writ of Certiorari at 19, *Huffman* v. *Western Nuclear, Inc.*, No. 87-645.) The Secretary would then be prohibited from enriching foreign uranium, even though no domestic uranium would be available for enrichment. In other words, no enrichment services could be provided by the United States.

[5] Congress *did* impose automatic mandatory requirements in other provisions of the Act. For example, Section 2210b(d) of the Act, as amended, directs the United States Trade Representative to request an "escape clause" investigation under 19 U.S.C. § 2251 if the Secretary determines that the domestic uranium industry is seriously injured or threatened by excessive imports. (*See* 42 U.S.C. § 2210b(d).) And Section 2210b(e)(1) requires the Secretary to request the Secretary of Commerce to initiate a "national security" investigation under 19 U.S.C. § 1862 where he determines that imports of uranium accounted for greater than 37.5 percent of domestic requirements for two consecutive years. (*See* 42 U.S.C. § 2210b(e)(1).) Those provisions—with their automatic triggers—must be contrasted with the structure of Section 161(v), which requires the Secretary to act only "to the extent necessary to assure . . . ."

[6] The lower court's interpretation of Section 161(v) also disregards the Secretary's specific factual finding that restricting the enrichment of foreign unranium would not assist the domestic industry. (51 Fed. Reg. at 27,138.) The lower court stated that such restrictions should be imposed "until the domestic industry is rejuvenated and becomes viable." (Pet. App. at 17a.) This directive assumes a causal link between enrichment of foreign uranium and the health of the domestic industry which the Secretary has specifically found does not exist. The lower court improperly substituted its judgment with respect to the facts for that of the Secretary.

The courts cannot assume that Congress would have intended such an absurd result.[7] *See, e.g., United States* v. *Turkette*, 452 U.S. 576, 580 (1981) ("[A]bsurd results are to be avoided" in interpreting statutes).

[7] The Court of Appeals also stated that under the Secretary's interpretation of the statute, "the DOE proposes to abandon the statutory goal." (Pet. App. at 18a.) This is incorrect. DOE has never proposed to abandon the statutory goal, nor has it even challenged the logic of the statute. (51 Fed. Reg. 27,132 *et seq.* (1986).) Rather, based upon his expertise, the Secretary has concluded that under present circumstances restrictions on enrichment of foreign uranium would not meet the condition precedent spelled out in the statute that any such restrictions be imposed only if they would assure the viability of the domestic industry. (*Id.*) This represents not an abandonment of the statutory goal, but a compliance with the directives of Congress that such restrictions be imposed only "to the extent necessary" to assure the viability of the domestic industry.

CONCLUSION

For the foregoing reasons, the Canadian Interests respectfully urge that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

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November 18, 1987

APPENDIX A

Canadian Embassy Ambassade du Canada

Note no. 194

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to a decision of July 20, 1987, in the United States Court of Appeals for the Tenth Circuit to provide relief to the United States' domestic uranium industry based on Section 161 (V) of the Atomic Energy Act of 1954. The court has concluded that the previous decision of the United States District Court for the District of Colorado was correct with respect to the statutory obligation under Section 161 (V), and has affirmed that injunctive relief was appropriate by enjoining the Department of Energy to limit the enrichment of uranium of foreign origin destined for use within the United States. The result of this decision is that there is now in effect a complete ban on the enrichment of foreign uranium in the United States.

It is the view of the Government of Canada that the decision, should it remain in force, will severely disrupt Canadian exports of uranium to the United States, will have harmful implications for the international uranium market, and will give rise to major trade irritants between the United States and its current suppliers of uranium. In addition, restricting the United States market to only domestic uranium would be completely at odds with current efforts to negotiate a free-trade agreement between our two countries, contrary to declarations against protectionism made at Punta del Este, and clearly inconsistent with the United States' GATT obligations.

Canada will be the foreign supplier most adversely affected by this restriction. Canada is a reliable, fair and competitive supplier of uranium to many countries and is, by far, the largest foreign supplier to the United States. One-third of Canadian uranium production is exported to meet the requirements of United States power utilities. These sales, which exceeded $200,000,000 in 1985, represent nearly 70 percent of total U.S. uranium imports.

It must be recognized that, to the extent United States utilities choose not to purchase enrichment services abroad, the affirmation of the lower court's decision represents a total embargo on imports of uranium from Canada. The Canadian government is very concerned to see the world's largest market for uranium once again protected by unilateral non-tarrif [sic] barriers as it was during the period from 1967 to 1984.

The Government of Canada urges the Government of the United States to appeal this court decision so that unrestricted access for foreign uranium will be restored. If it is found that this decision cannot be appealed, the Government of Canada would urge that all legislative and administrative avenues be actively explored to effect the elimination, or at least the significant reduction, of this unilateral import restriction.

The Embassy of Canada takes this opportunity to renew to the Department of State the assurances of its highest consideration.

[Signed and Sealed
with Embassy seal]

July 22, 1987
Washington, D.C.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

WESTERN NUCLEAR, INC., *et al.*,
Plaintiffs,

v.

F. CLARK HUFFMAN, *et al.*,
Defendants.

Civil Action No. 84-2315

DECLARATION OF ROBERT A. REINSTEIN

I, Robert A. Reinstein, declare and say:

1. Since February 1982 I have been the Director of Energy Trade Policy, Office of the United States Trade Representative, Executive Office of the President. From 1975 to 1982 I was employed by the Federal Energy Administration (FEA) and the U.S. Department of Energy (DOE), which the FEA became part of in October 1977. From 1978 to 1981 I was Director of Economic and Data Analysis for DOE's Economic Regulatory Administration, serving in effect as the chief analyst for DOE's regulatory programs. In my current position I am responsible for coordination of Administration trade policy for energy and related sectors. In this capacity, I chair a number of interagency subcommittees and working groups, including the Energy Trade Policy Subcommittee of the Trade Policy Staff Committee and the interagency Uranium Working Group. I make the following statements based upon my personal knowledge and belief and upon other information conveyed to me by my advisors in the course of my official duties.

2. I am familiar with the above-referenced litigation. I have reviewed plaintiffs' proposed order, which would enjoin

the DOE from enriching source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States until the viability of the domestic uranium industry is assured. I have also reviewed the declaration of James B. Devine, Department of State, setting forth the negative foreign policy implications of plaintiffs' proposed order.

3. I understand that in determining whether to issue an injunction it is appropriate to consider the public interest, including the foreign policy and the trade policy interests of the United States. I submit this declaration to advise the Court that entry of an injuction [sic] such as piantiffs [sic] propose will have major adverse effects on the trade policy of the United States.

4. The Office of the United States Trade Representative has collaborated with numerous other government agencies in conducting an in-depth investigation of conditions in the domestic uranium mining and milling industry. This investigation indicated that a ban on enrichment of foreign uranium is highly unlikely to render the domestic industry "viable" in any meaningful sense. On the contrary, any such restriction would discriminate against foreign suppliers of unenriched uranium and would impair the United States [sic] trading relations with some of our most important trading partners.

5. An injunction against enrichment of foreign uranium would be particularly damaging to trade relations with Canada. Canada is our largest trading partner and is also a major supplier of unenriched uranium. A ban on U.S. enrichment of Canadian feedstock would force U.S. utilities with contracts for Canadian supplies to seek enrichment services in Europe at substantially higher transportation costs. This would impair Canadian access to and competitiveness in the U.S. market and very likely depress the price of Canadian uranium in world markets. The Canadian leadership and media will interpret such a move as a significant new trade barrier, and will vociferously object. Indeed, they have already informally expressed strong concerns on this issue.

6. Plaintiffs' proposed injunction would be especially harmful at the present time. The United States and Canada have just begun negotiations towards a bilateral trade arrangement whereby both sides are seeking to remove substantially all barriers to bilateral trade in goods and services. To erect a new trade barrier at the very outset of these negotiations—without economic justification—could be construed in Canada as evidence that the U.S. government lacks genuine interest in free trade and/or lacks the ability to provide promised benefits under a free trade agreement. Such a perception would erode the base of public support for this high-visibility initiative of the current government in Canada, and complicate the task of negotiators on both sides.

7. New enrichment restrictions on foreign uranium would also seriously interfere with on-going, parallel negotiations to secure removal of certain Canadian trade barriers affecting the uranium processing industry. It is difficult to argue that Canada should remove barriers to free trade in uranium products at the same time that we are adding barriers of our own.

8. A ban on enrichment of foreign uranium would harm the commercial interests of other major trading partners such as Australia. Such a ban would be subject to legal challenge under the General Agreement on Tariffs and Trade (GATT). GATT Article III broadly prohibits member nations from adopting rules or regulations which affect the internal sale, distribution or use of goods, and which discriminate against foreign suppliers of such goods. Even if the stated ban were considered defensible under the national security exception of GATT Article XXI, the United States might be found to owe compensation to our trading partners for the "nullification or impairment" of their benefits under the GATT. In this case, other sectors of the U.S. economy would be asked to make sacrifices for any short-term relief provided for the uranium industry.

9. For all the foregoing reasons, I have concluded that implementation of an injunction against U.S. enrichment of foreign uranium would have major adverse effects on pending trade negotiations and on the trade policies of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 1986.

[Signed]
Robert A. Reinstein

APPENDIX C

EXCERPTS FROM ELEMENTS OF CANADA—UNITED STATES FREE TRADE AGREEMENT

Canadian Embassy
Ambassade du Canada

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ELEMENTS OF CANADA—U.S. FREE TRADE AGREEMENT

October 4, 1987

Attached are *38* pages of agreed text setting out the essential elements of a Free Trade Agreement between the United States and Canada. Each was initialed by the negotiators.

For the United States:	For Canada:
s/ James Baker III	s/ Michael Wilson
s/ Clayton Yeutter	s/ Pat Carney
s/ Peter McPherson	s/ David Burney
s/ Peter Murphy	s/ Simon Reisman

OBJECTIVES

The objectives of this Agreement, as elaborated more specifically in the provisions of this Agreement, are to:

(a) eliminate barriers to trade in goods and services between the territories of the Parties;

(b) facilitate conditions of fair competition within the Free Trade Area,

(c) significantly expand liberalization of conditions for investment within the Free Trade Area;

(d) establish effective procedures for the joint administration of the Agreement and the resolution of disputes;

(e) lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the Agreement.

ARTICLE: EXTENT OF OBLIGATIONS

The Parties to this Agreement shall ensure that all necessary measures are taken in order to give effect to its provisions, including their observance, except as specifically provided elsewhere in this Agreement, by state, provincial and local governments.

STANDSTILL

Both Parties recognize that this agreement is subject to domestic approval on both sides. Accordingly both Parties understand the need to exercise their discretion in the period prior to entry into force so as not to jeopardize the approval process or undermine the spirit and mutual benefits of the Free Trade Agreement.

* * *

ENERGY

There is broad agreement to assure the freest possible bilateral trade in energy, including nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States.

Both sides have agreed to prohibit restrictions on imports or exports, including quantitative restrictions, taxes, minimum import or export price requirements or any other equivalent measure, subject to very limited exceptions: (1) short supply or prevention of exhaustion of a finite energy resource, but only if the exporting Party provides proportional access to the diminished supply and does not otherwise discriminate on price; or (2) national security, to supply military establishment or critical defense contracts, respond to a situation of armed

conflict, prevent nuclear proliferation or respond to direct threats to supply of nuclear materials for defense purposes.

Parties will consult on energy regulatory actions which could directly result in discrimination inconsistent with the principles of the Agreement.

With respect to existing measures, Canada has agreed to: (1) limit the application of its "surplus test" for energy exports to a monitoring function, with any possible future restriction subject to the proportionality and nondiscriminatory pricing conditions above; (2) eliminate its requirement that uranium exports be upgraded to the maximum extent possible in Canada prior to export; and (3) eliminate a discriminatory price test on electricity exports. The United States has agreed to: (1) eliminate the legislative restriction on enrichment of Canadian uranium; and (2) allow exports of Alaskan oil to Canada, up to 50 thousand barrels per day on an annual average basis, subject to a condition that such oil be transported from Alaska in U.S. flag vessels.

Both sides have agreed to: (1) support continuing Bonneville Power-B.C. Hydro negotiations, encouraging parties to work out their differences consistent with the objectives and principles of the Agreement; and (2) allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.